

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LUPE PENA GARCIA,
Petitioner.

No. 2 CA-CR 2015-0013-PR
Filed February 25, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County
No. CR2011149356001DT
The Honorable Bruce R. Cohen, Judge

PETITION FOR REVIEW DISMISSED

Lupe P. Garcia, Buckeye
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which
Chief Judge Eckerstrom and Judge Espinosa concurred.

STATE v. GARCIA
Decision of the Court

MILLER, Presiding Judge:

¶1 Lupe Garcia seeks review of the trial court's order rejecting his request to file an untimely petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. Because there is no final decision for us to review pursuant to Rule 32.9(c), we dismiss Garcia's petition.

¶2 Garcia pled guilty to organized retail theft and was sentenced to a four-year prison term. He filed a notice of post-conviction relief and appointed counsel filed a notice stating she had reviewed the record but had found no "claims for relief to be raised in post-conviction relief proceedings." Despite being granted leave to do so, Garcia did not file a pro se petition, and the trial court dismissed the Rule 32 proceeding in October 2012.

¶3 In June 2013, Garcia filed a request seeking permission to file a "delayed" petition for post-conviction relief, explaining that he is "basically illiterate" but had finished "ninth grade and is currently working on his GED," and that a contract paralegal would assist him with preparing a petition. The trial court then issued a "Notice to Defendant Re: Untimeliness of Rule 32 Relief," in which it informed Garcia that he was required to file a notice of post-conviction relief and, because any such notice would be untimely, he could only raise claims pursuant to Rule 32.1(d) through (h). The court further stated it would take "no further action" unless Garcia sought relief under one of those provisions. This petition for review followed.

¶4 Pursuant to Rule 32.9(c), a petitioner may seek review in this court following a "final decision of the trial court on the petition for post-conviction relief or the motion for rehearing." No such decision is presented here and, thus, there is nothing for us to review. Accordingly, the petition for review is dismissed.